

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SARA M. ROBLES,)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	04-11012-DPW
)	
JO ANNE B. BARNHART, Commissioner)	
Social Security Administration,)	
Defendant.)	

MEMORANDUM AND ORDER
July 22, 2005

Claimant Sara M. Robles appeals the final decision of the Commissioner of the Social Security Administration ("Commissioner") denying her application for disability benefits. The dispositive cross motions before me concern whether the Commissioner's determination that Ms. Robles was "not disabled" is supported by substantial evidence in the record.

I. PROCEDURAL HISTORY

On November 5, 2001, Ms. Robles applied for Supplemental Security Income ("SSI") benefits under Title XVI of the Social Security Act ("Act") alleging disability due to polyarthralgias and polyarthrit¹ of the "large" joints. Her application was denied upon initial review on January 4, 2002 and upon reconsideration on February 22, 2002.

Ms. Robles' case was subsequently heard on February 5, 2003

¹ Pain and inflammation of multiple joints

before an Administrative Law Judge ("ALJ") who found no disability under the terms of the Act and denied her claim for benefits on August 6, 2003. Ms. Robles requested review of the ALJ's decision on March 25, 2004. The Appeals Council denied her request, rendering the ALJ's decision final.

Having exhausted all available administrative remedies, Ms. Robles seeks judicial review of the Commissioner's decision pursuant to 42 U.S.C. § 405(g).

Ms. Robles claims that the ALJ erred in two respects in making his disability determination. First, she contends the ALJ failed to follow the proper standards for evaluating pain as set forth in Avery v. Secretary, 797 F.2d 19 (1st Cir. 1986). Second, she contends the ALJ failed to consider the impact of her obesity on her impairment.

II. FACTS OF RECORD

At the time of the determination, Ms. Robles was a 35-year-old female with an eleventh grade education and no prior work history.² She has remained unemployed since filing for SSI disability benefits in November 2001 and receives welfare payments.

² Although Ms. Robles testified to working as a part-time retail sales clerk, a cook's assistant and a part-time hairdresser's assistant over a period of 15 years, her tax documentation reflected no such earnings. Thus, construing the evidence in the light most favorable to the claimant, the ALJ presumed no prior work history for the purposes of determining disability.

Her relevant medical history began when she sought treatment the St. Anne's Hospital Emergency Department on August 30, 2001 for bilateral shoulder pain that she believed was triggered by antibiotics administered to her after a recent tooth extraction. On September 1, 2001, she returned to St. Anne's Hospital for continued treatment; she was diagnosed with myofascial strain³ and prescribed Toradol to alleviate pain.

On September 3, 2001, still symptomatic, Ms. Robles visited the emergency room at Charlton Memorial Hospital. X-rays taken of her shoulders were normal and exhibited no obvious injury. However, hospital staff observed a limited range of motion in her shoulders and advised her to follow up at Family Health Care Center.

Accordingly, Ms. Robles visited Family Health Care Center on September 7 and 10 reporting increased shoulder and arm pain. Dr. Hugo Jauregui performed blood work and a physical examination. The result of the blood work showed an elevated RA Titer,⁴ but the doctor noted her physical examination was "purely unremarkable." Dr. Jauregui diagnosed polyarthralgias-arthritis of the large joints and, secondarily, "morbid" obesity and generalized joint pain in the shoulders, back, pelvis and knees. Notably, Dr. Jauregui found insufficient criteria to support a

³ Injury or impairment of connective tissue surrounding the muscle.

⁴ Rheumatoid factor test

diagnosis of rheumatoid arthritis.

When Dr. Jauregui saw Ms. Robles again on October 25, 2001 for joint pain, hand stiffness in the morning and decreased range of motion in her shoulders, knees, elbows and lower back, he observed that she was "very symptomatic." However, x-rays of her lumbar spine, hands and shoulders were all normal.⁵

On December 16, 2001, Ms. Robles was seen at Saint Anne's Hospital for mid-back pain and fever. There, she was diagnosed with "viral illness (and/or upper respiratory infection) with myalgias" and treated conservatively with medication.

Dr. Jauregui noted in a December 18, 2001 letter to Disability Determination Services that Ms. Robles had missed three scheduled appointments with him since September 2001. He wrote that her prognosis was "quite good" and that her condition could be easily controlled by medication. Dr. Jauregui further reported that he had advised Ms. Robles to obtain employment to regain functional capacity and as a recreational activity. Dr. Jauregui opined that Ms. Robles did not meet the criteria for disability.

On December 28, 2001, a consulting physician for Disability

⁵ Dr. Jauregui also noted his intention to write a letter "to help [Ms. Robles] get some assistance." In a general letter dated November 5, 2001, Dr. Jauregui wrote that Ms. Robles suffered systemic symptoms that included diffuse myalgias and arthralgias that prevented her from lifting over ten pounds or walking more than 500 feet. The ALJ deemphasized this opinion as inconsistent with, *inter alia*, Dr. Jauregui's own observations that her physical exams and x-rays were "perfectly normal."

Determination Services ("DDS"), Dr. John S. Manuelian, reviewed Ms. Robles medical records to make a disability determination. Dr. Manuelian noted no objective abnormalities to indicate a severe medical impairment.

Another DDS consulting physician, Dr. Saro Palmeri, reviewed her records on February 19, 2002. Dr. Palmeri concluded that Ms. Robles was limited by pain and obesity only. She could lift and carry ten pounds frequently, twenty pounds occasionally, and she could stand/walk or sit for about six hours in an eight-hour day.

On February 21, 2002, Dr. Jauregui saw Ms. Robles again, noting that she was "doing just o.k." At that time, he confirmed her seropositive RA and observed no inflammatory activity. He also diagnosed polyarthrititis of the small joints.

Between March 26 and June 30, 2002, Ms. Robles saw chiropractor Dr. Rajiv Nehra, D.C., who diagnosed her with "moderate" chronic neck and back pain. Dr. Nehra administered manual treatments, which relieved Ms. Robles' pain only for short periods of time. He opined that Ms. Robles could not sustain competitive employment on a full-time, ongoing basis and should be placed on disability to avoid exacerbating her condition.

On July 30, 2002, Ms. Robles transferred her primary medical care to Dr. Tushar Patel at the Fall River Walk-in Emergency Medical Office. Through January 14, 2003, Ms. Robles was seen at Fall River Walk-in on several occasions for joint pain, difficulty sleeping, headaches and other medical issues unrelated

to her arthritic impairment, including a toothache and injuries due to a fall. In addition, doctors consulted with her regarding breast reduction surgery to reduce her back and neck pain and gastric bypass surgery to treat her obesity.

At her administrative hearing, Ms. Robles testified to the ALJ that she was unable to work because of worsening pain and swelling in her large joints, particularly her left shoulder. She indicated that medications, chiropractic sessions and hot baths helped reduce her pain.

She reported experiencing intermittent pain and swelling in both hands one to two mornings a week. The pain in her hands lasted up to half a day, but the swelling would subside one to two hours after taking medication. In addition, she said she experienced bilateral foot numbness and tingling.

Ms. Robles testified that she had somebody fill out forms for her on November 7, 2001 because her hands were painful and swollen. A Social Security Administration claims representative who conducted a face-to-face interview on that date, however, noted that she had no trouble using her hands and filed with "no problem."

At the time of the hearing, Ms. Robles took medications prescribed by various doctors, including Provera, Amitriptyline, Fioricet, Ranitidine, Vistaril, Ibuprofen and Motrin. Her doctor prescribed Fioricet to alleviate headaches from taking Vistaril, a pain medication. Ms. Robles reported suffering sleeplessness

as a side-effect of another medication. She also claimed that Provera, a hormone medication, caused her to experience mood swings, but the record does not reflect any such complaints made to her doctors.

In describing her daily activities, Ms. Robles said she went to sleep at 8 PM, waking at 9 to 9:30 AM every morning. Ms. Robles also takes 30 minute to one hour naps twice a day. Her chiropractic appointments take place in the mornings twice a week. At times, due to drowsiness caused by her medication, she is unable to drive herself to her appointments. Ms. Robles testified, however, that she experiences no trouble concentrating or paying attention as a result of her condition.

During the day, she runs errands, such as dropping off her laundry and sometimes her friends take her out to lunch or to the mall. She does most of her own housework and food shopping. In addition, she cooks her own meals, but not everyday.

The ALJ asked the consulting vocational expert ("VE") at the administrative hearing what jobs in the national economy someone of Ms. Robles same age, education and work experience could perform if she were limited to light work that allowed for periods of moderate reduction to maintain attention and concentration and avoided exposure to unprotected heights, dangerous machinery or automotive equipment. The VE testified that such a person could work as a retail sales clerk,

hairdresser assistant, assembler, machine operator, packer, inspector or doing light cleaning. She also noted that a total of 34,000 such jobs existed in the Southeastern Massachusetts region where Ms. Robles lives.

The VE further testified that a person who was unable to use her hands for gross or fine manipulation for half a day once or twice a week would be unable to perform those jobs. In addition, an impaired ability to concentrate for one quarter of her work time, or one day a week, would preclude those jobs.

On the basis of this information, the ALJ determined that although Ms. Robles suffered from an arthritic condition that could be reasonably expected to cause some discomfort and impairment, the intensity of pain and degree of incapacity she alleged was inconsistent with the medical evidence. Her impairments did not, singly or in combination, meet or equal the clinical requirements of disability listing 1.02, 10.04 or any other impairment found in the Social Security Administration's Listing of Impairments. 20 C.F.R. 416.925, Part 404, Subpart P, Appx. 1. Furthermore, insofar as she retained the capacity to perform any of a significant number of jobs in the national economy, she was not disabled.

III. DISCUSSION

A. Standard of Review

A claimant who has been denied benefits by final decision of

the Commissioner of the Social Security Administration ("Commissioner") may have her case reviewed by the district court sitting in the judicial district in which she resides. 42 U.S.C. § 405(g). The reviewing court does not make a *de novo* determination on the record but, rather, evaluates whether substantial evidence exists to support the conclusion of the Administrative Law Judge ("ALJ"). Lizotte v. Sec'y of Health & Human Servs., 654 F.2d 127, 128 (1st Cir. 1981). Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion." Miranda v. Sec'y of Health, Educ. & Welfare, 514 F.2d 996, 998 (1st Cir. 1975)

If substantial evidence exists to support the ALJ's determination, the Court must accept his findings as conclusive even if the record arguably could justify a different conclusion. Lizotte, 654 F.2d at 128; Pagan v. Sec'y of Health & Human Servs., 819 F.2d 1, 3 (1st Cir. 1987). However, if the evidence of record is inadequate to support the conclusion, the court may enter a judgment, upon the pleadings and the record, affirming, modifying or reversing the Commissioner's decision with or without remanding the cause for rehearing. 42 U.S.C. § 405(g).

B. Analysis

Ms. Robles challenges the Commissioner's final decision to deny her disability benefits claiming that the ALJ erred, first, by failing to follow the proper standards for evaluating her

allegations of pain in determining her residual functional capacity, and, second, by failing to factor in properly the impact of her obesity on her impairment.

A claimant is disabled and eligible for benefits under the Social Security Act if she has a severe, medically determinable impairment preventing her from physically or mentally engaging in "substantial gainful work." Miranda, 514 F.2d at 998; Avery v. Sec'y of Health & Human Servs., 797 F.2d 19, 27 (1st Cir. 1986). An impairment that does not fall within the Social Security Administration's predetermined Listing of Impairments may still qualify as a disability if it, singly or in combination with other impairments, equals the severity of a listing. 20 C.F.R. 416.925, Part 404, Subpart P, Appx. 1. To determine the severity of a claimant's alleged impairment, the ALJ must measure her residual functional capacity ("RFC"), or her physical and mental ability to function notwithstanding the impairment. Avery, 797 F.2d at 28.

1. Evaluation of pain and discomfort

The ALJ followed the correct standards for evaluating Ms. Robles' complaints of pain to find that she was not disabled. In this connection, the ALJ gave proper consideration to the principle that since symptoms of pain can result in a greater severity of impairment than a disorder may physically manifest, they may not be disregarded solely because they are not

objectively substantiated by medical evidence. Id. at 29.

An ALJ must apply a bipartite standard to determine the credibility of the claimant's subjective complaints of pain. Id. The claimant must, first, have objective clinical evidence of impairment that could reasonably be expected to cause the pain alleged. Once this primary requirement is met, the claimant must show that other evidence, specifically, statements by claimant, her physicians and third parties, support her contention of pain. Id. An ALJ must consider all dimensions of the evidence pertaining to:

1. The nature, location, onset, duration, frequency, radiation, and intensity of any pain;
2. Precipitating and aggravating factors (e.g., movement, activity, environmental conditions);
3. Type, dosage, effectiveness, and adverse side-effects of any pain medication;
4. Treatment, other than medication, for relief of pain;
5. Functional restrictions; and
6. The claimant's daily activities.

Id. at 28-29. In addition, the ALJ can factor in his own observations of the claimant to make inferences and draw conclusions regarding credibility. Soc. Sec. Rul. 96-7P, 1996 SL 374186 *5 (S.S.A.).

Ms. Robles' physical diagnostics were inconsistent with the level of pain and impairment she alleged. The results of her physical exams remained basically "normal" and "negative" with little or no evidence of inflammation in her joints aside from x-rays of her cervical spine, which exhibited "minor" disc bulging

at the C5-6 and C6-7 positions.

The ALJ's opinion is consistent with the opinions of Ms. Robles' treating and consulting physicians about her functional capacity. In addition, Dr. Jauregui, Ms. Robles' primary physician, recommended that she work to regain functional capacity and as a recreational activity. Drs. Manuelian and Palmeri, made parallel diagnoses that Ms. Robles had no severe medical impairment, could sit or stand for six hours, resting every two hours, and could lift and ten pounds frequently and twenty pounds occasionally.

Moreover, Ms. Robles' examining physicians consistently described her level of pain as moderate. That she retains the ability to perform a wide range of daily activities, including errands, housework and food shopping, bolsters the ALJ's conclusion that she maintains the functional capacity to perform light work.

Although Ms. Robles contends that the ALJ failed to consider fully the side effects of her prescription medications on her impairment, I find the ALJ addressed their effect and reasonably inferred that they did not significantly impact her RFC. He noted that she never reported any significant side effects to her doctors, including the alleged mood swings introduced at hearing. Moreover, it is notable that the mood swings were purportedly caused by hormone medication for menstrual regularity and not by pain medication for the treatment of arthritis. A record devoid

of medical documentation to corroborate severe side effects from the alleged physical cause of disability leads to the fair inference that any impairment suffered was insufficiently consequential to disclose to a health care provider.

Given the inconsistencies between the medical record and Ms. Robles' allegations regarding her level of pain and incapacitation, the ALJ's finding that Ms. Robles subjective complaints were exaggerated and not credible was reasonable.

Although Ms. Robles' chiropractor, Dr. Nehra, opined that she could not sustain employment and should be placed on disability, the ALJ was within his discretion to assign more weight to the opinions of Drs. Jauregui, Manuelian and Palmeri. A single chiropractor's opinion is not necessarily controlling; an ALJ may credit it with as much or little weight as he finds appropriate based on all the evidence before him. 20 C.F.R. § 404.1527(d)(2); see generally Miranda, 514 F.2d at 998 (holding that the Secretary, here, Commissioner, determines what weight to give to particular items of evidence). Of course, the ALJ may not substitute his own impression of a claimant's health for uncontroverted medical opinion. Marin v. Sec'y of Health & Human Servs., 758 F.2d 14, 16 (1985). But, where medical inconsistencies arise in the record, as here, the ALJ -- and not the Court -- has the ultimate discretion to weigh and resolve them. Lizotte, 654 F.2d at 128.

Because the ALJ's conclusion is substantiated by the medical

record, I must leave his disability determination undisturbed on that ground.

2. Consideration of obesity in disability determination

The ALJ properly factored in the impact of Ms. Robles' obesity in determining her RFC. Obesity should be considered in evaluating the severity of a claimant's impairment because the effect of obesity in concert with other impairments might be greater than the effects of each impairment considered in isolation. Soc. Sec. Rul. 02-1P, 2000 WL 628049 *5 (S.S.A.). For instance, an obese person with arthritis in a weight-bearing joint may have more pain and limitation than a non-obese person with arthritis, this may occur to such an extent that the circumstances reach a level of impairment that equals a disability listing. Id.

The ALJ adequately considered Ms. Robles' obesity in measuring her RFC. He found no indication in the record of any significant functional limitations in the record resulting from her obesity apart from those ascribed to her arthritis.

The ALJ's conclusion is consistent with that of Ms. Roble's doctors who were clearly aware of her obesity. They opined that Ms. Robles had the capacity to perform light work and even advised Ms. Robles to obtain employment. None of these recommendations were given in exclusive consideration of her arthritic impairment, but rather, they were based on Ms. Robles' overall capacity to function.

The ALJ reasonably concluded that Ms. Robles' obesity was not a severe impairment that, combined with her arthritic disorder, established the equivalent of a disability listing.

IV. CONCLUSION

On the record, I find no cause to reverse or remand the ALJ's decision. The Commissioner's Motion for an Order Affirming the Final Decision is GRANTED; Ms. Robles Motion for Summary Judgment is DENIED.

/s/ Douglas P. Woodlock

DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE